

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HOLMES GROUP, INC.,

Plaintiff,

vs.

WEST BEND HOUSEWARES, LLC and
FOCUS PRODUCTS GROUP, LLC,

Defendants.

Civil Action No. 05-CV-11367 WGY
(Alexander, M.J.)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF NON-WILLFULNESS

Plaintiff The Holmes Group, LLC ("Holmes") accuses Defendants West Bend Housewares, LLC and Focus Products Group, LLC (collectively referred to as "West Bend" for purposes of this motion) of infringing Holmes' U.S. Patent Nos. 6,573,483 ("the '483 patent") and 6,740,855 ("the '855 patent"), both entitled "Programmable Slow Cooker Appliance." Without a basis in fact or law, Holmes asserts that the alleged infringement is "willful."

Pursuant to Rules 56(a) and (b) of the Federal Rules of Civil Procedure, West Bend moves for summary judgment that it has not willfully infringed the patents-in-suit. Rather than disregarding Holmes' patent rights, West Bend took affirmative action upon learning of the patents to ensure that it did not infringe those patents. West Bend retained experienced patent counsel, Attorney Martin L. Stern, early in the development stages of the accused product. Attorney Stern counseled West Bend throughout development of the accused product to ensure that the product did not infringe Holmes' patents and rendered oral and written non-infringement opinions to West Bend. West Bend relied on those opinions and took no action in disregard of Holmes' patent rights.

Holmes has no evidence, let alone clear and convincing evidence, of willful infringement. To the contrary, it is undisputed that West Bend sought, obtained and followed competent legal advice from its patent counsel to design the accused product so that it does not infringe. West Bend had a good faith basis for its belief that it does not infringe, and Holmes has no evidence whatsoever to the contrary.

The grounds supporting this summary judgment motion are more fully set forth in the accompanying: (1) defendants' statement of material facts as to which there are no genuine issues of dispute; (2) defendants' memorandum in support of the motion; and (3) declaration testimony of the president of West Bend Housewares, LLC, Mr. Michael Carpenter, describing the development of the West Bend cooker in conjunction with advice from patent counsel.

For the foregoing reasons, and those set forth in the accompanying documents submitted in support of this motion, West Bend respectfully requests the Court to (1) enter summary judgment against Holmes and in favor of West Bend on Holmes' complaint and West Bend's counterclaims seeking a declaration of non-willfulness that West Bend has not willfully infringed the '483 and '855 patents; and (2) dismiss Holmes' complaint with prejudice.

REQUEST FOR ORAL ARGUMENT

Under Local Rule 7.1(D), Cohesive believes that oral argument will assist the Court and thus requests a hearing.

LOCAL RULE 7.1 CERTIFICATE

The undersigned certify that on November 29, 2006 counsel for the parties conferred by telephone in a good faith attempt to resolve or narrow the issues presented in this motion but were unable to reach agreement.

Dated: December 1, 2006

WEST BEND HOUSEWARES, LLC
FOCUS PRODUCTS GROUP, LLC
By their attorneys,

/s/ Erik P. Belt

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CERTIFICATE OF SERVICE

I certify that, on the above date, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants.

/s/ Erik P. Belt

Erik Paul Belt, BBO # 558620